

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHANNON J. THIBODEAU,

Plaintiff,

v.

KILOLO KIJAKAZI,

Defendant.

Case No. [21-cv-02638-AGT](#)

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

Re: Dkt. No. 8

On March 8, 2019, the Social Security Administration’s appeals council denied Shannon Thibodeau’s request for review of a decision denying her claim for disability benefits. Five days later, a sixty-day clock started ticking for Thibodeau to file a complaint for judicial review. *See* 42 U.S.C. § 405(g); 20 C.F.R. §§ 416.1401, 422.210(c). That sixty-day period could have been extended by the appeals council “upon a showing of good cause.” 20 C.F.R. § 422.210(c). But Thibodeau didn’t request an extension, so she had until May 13, 2019, to file her complaint. She didn’t meet that deadline. She filed her complaint on April 9, 2021, almost two years later.

The sixty-day filing deadline is “designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.” *Bowen v. City of New York*, 476 U.S. 467, 481 n.13 (1986) (simplified). To protect these interests, the deadline is strictly enforced unless the plaintiff can demonstrate that “extraordinary circumstances were the cause of [her] untimeliness and made it impossible to file the [complaint] on time.” *Kwai Fun Wong v. Beebe*, 732 F.3d 1030, 1052 (9th Cir. 2013) (simplified). This is a very high threshold, and Thibodeau hasn’t met it.

She offers four reasons for why she didn’t timely file her complaint. First, she says she had a “crooked lawyer” who “retaliat[ed]” against her. Dkt. 14 at 2. She terminated his services in April 2019, one month before her complaint was due. *See* Dkt. 9 at 2. Second, in 2018, her father had a stroke and her “sole attention and energy went into helping him, and [into] trying to

continue to raise [her] two children on [her] own with no financial support.” *Id.* at 3. Third, she had PTSD symptoms and was “being drugged without consent.” *Id.* at 4. And fourth, she says her complaint was “untimely filed due to homelessness.” Dkt. 14 at 2.

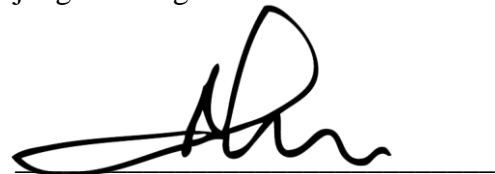
No records or other evidence has been offered to support these contentions. Thibodeau’s own conclusory statements are all that she’s offered, which isn’t enough. *See Bohmker v. Oregon*, 903 F.3d 1029, 1044 (9th Cir. 2018) (“A conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.” (quoting *FTC v. Publ’g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997))).¹

Also, even if Thibodeau’s testimony is taken as true, it lacks important details. She doesn’t say when she was homeless, when she experienced PTSD symptoms, or when she was drugged without consent. She also doesn’t explain why she couldn’t have filed her complaint after she terminated her attorney’s services in April 2019. At that point, the sixty-day limitations period had yet to expire.

A form complaint is commonly used in this type of case,² and Thibodeau ultimately did use one. *See* Dkt. 1. The form doesn’t require much information: just the plaintiff’s name and address, the last four digits of her social security number, and the name of the case before the SSA. Even during a difficult period of her life, Thibodeau likely could have completed this form. She hasn’t offered sufficient evidence to create a triable issue of fact to the contrary, so her untimely case cannot proceed. The defendant’s motion for summary judgment is granted.

IT IS SO ORDERED.

Dated: January 13, 2022



Alex G. Tse
United States Magistrate Judge

¹ On December 9, 2021, the Court converted the defendant’s motion to dismiss into a motion for summary judgment and gave the parties twenty-one days to supplement the record. *See* Dkt. 13. Thibodeau filed a supplemental statement on December 16, 2021, *see* Dkt. 14, which the Court has considered.

² *See* <https://cand.uscourts.gov/wp-content/uploads/forms/civil-forms/SocSecComplaintForm.pdf>.